ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH AT CHANDIMANDIR

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TA 147 of 2011 (arising out of CWP 1251 of 1994)

Malah Singh (deceased) through his LRs Ranbir Singh and others **……** **Petitioner(s)**

Vs

Union of India and others **……** **Respondent(s)**

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For the Petitioner (s) : Mr. Surinder Sheoran, Advocate
For the Respondent(s) : Mr.Vibhor Bansal, CGC for
Dr. Urmil Gupta, CGC

Coram: Justice Prakash Krishna, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.

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ORDER
18.02.2014

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1. This petition came to be transferred from High Court of Punjab & Haryana at Chandigarh and registered as TA No. 147 of 2011. By this petition the petitioner prays for issuance of a writ in the nature of certiorari quashing the impugned order dated September 1993 Annexure P-1 vide which the claim for grant of disability pension has been rejected by the Defence Pension Liaison Cell, Allahabad.

2. The brief facts of the case are that the petitioner was enrolled in the Army as Sepoy on 11.1.1935 and was promoted to the rank of JCO on 25.11.1945, Thereafter he was commissioned in the Army on 12.8.1948 and appointed ante dated w.e.f. 12.8.1946 vide Govt of India order dated 19.5.1959. Thereafter he was promoted as Captain on 12.8.1954 and retired on 1.2.1966 with service pension. During service the petitioner was placed in LMC 'C' (P) due to disability 'CHOROIDO RETINITIS' Left eye by the Medical Board held at Calcutta on 10th June, 1950 on return from J& K. The Review Medical Board at MH Jalandhar Cantt on 8.10.1957 re-categorised the petitioner in permanent medical category CEE for the above named disability to his left eye. At a later date, in 1964 the petitioner suffered leg injury while he was posted at Rohtak and was treated at MH Delhi Cantt. After treatment he was declared fully fit (Category'A') with respect to the leg injury, however, his earlier categorisation in respect to eye disease was not changed. The Annual Medical Examination report dated 14.01.1965, submitted by Capt BC Dass Gupta indicated medical category 'CEE' (permanent). However, at the time of retirement on 12.02.1966 no medical board was held and as a consequence the disability was not assessed for attributability and

extent of disablement resulting in denial of any disability pension. His subsequent representation for grant of disability pension was rejected as the respondents were of the opinion that there was no evidence showing his low medical category. Aggrieved the petitioner filed a writ in the High Court which was dismissed by the Division Bench vide order dated 28th September, 1994. However, based on the review application the case was restored to its original number, transferred and registered as TA No.147 of 2011 at the AFT. The petitioner expired on 09.08.1996 now the LRs have been impleaded.

3. As per the averments of the petitioner he was injured on 4.8.1946 on the face and left eye due to enemy firing when he was fighting against the Pakistan. After treatment he was placed in LMC 'C' (P) due to disability 'CHOROIDO RETINITIS' Left eye in 1950 which was further re-categorised in the Review Medical Board at MH Jalandhar Cantt on 8.10.1957. The petitioner suffered leg injury in 1964 while he was posted at Rohtak and was treated at MH Delhi Cantt. After treatment he was found fully fit with respect to his leg injury (Category'A'), however, his earlier categorisation in respect of eye disease remained unchanged.

4. It is further averred that while being posted to NCC unit in Rohtak, when he was on leave, the petitioner received a telegram from the Army HQ informing about his retirement along with 300 Major and Captain. This action was necessitated due to some confusion in the retirement age which was required to be raised to 50 years. In early 1966 a letter from review medical board was received by the officers of Unit NCC Battalion but the medical could not be conducted as he was on annual leave. The petitioner joined his duties after finishing his leave and getting a letter from the Army HQ regarding the retirement age but he was told that he cannot continue service and therefore, he decided to take retirement at that juncture. When the petitioner was retired from the Army on 1.2.1966 no medical board was held. The petitioner was under the impression that he would automatically be granted disability pension because in his medical report his category was CEE (permanent). He was never asked by his Unit or Army HQ to produce himself before the medical review board. When the disability pension was not released to him, he started making representation to the Ministry of Defence. His case was forwarded to CDA(P) Allahabad but no fruitful purpose was served. Subsequently the petitioner represented his case in the years 1972 and 1993. However, the reply received from the Army in response to his representations was in the negative and the authorities were of the opinion that there is no evidence in his case on file of his Low Medical Category, based on his recovery categorisation in respect to leg injury.

5. The present writ petition filed in the High Court was earlier dismissed by the Division Bench vide order dated 28th September, 1994 with the observation that the petitioner did not suffer any disability during the course of his employment but he suffered the disability after he was released. There being no substance in the writ petition, it was summarily rejected. In the review application filed in the High Court the petitioner brought out his medical record based on which the order dated 28th September,1994 was recalled and the writ was restored to its original number and the case now has been transferred to this Tribunal and registered as TA No.147 of 2011.

6. In the written statement filed by the respondents, it has been averred that the petitioner's name appears at page 730 of the Army List for 1964. He was granted SSRC wef 01.06.1948 and granted permanent commission wef 09.09.1958 and was retired as Captain on 01.02.1966. He was granted service pension for his service from 01.06.1948 to 31.01.1966. As per the record available the petitioner did not suffer from any disability during his service, as borne out by Mod letter dated 08.10.1969 (R-1 at page 18 of the paper book). This was in reply to application of the petitioner for grant of disability pension dtd 25th 1968. After a gap of more than 25 years the petitioner has woken up and filed writ petition claiming disability pension. The relevant records and medical documents have been weeded out after retention for 15 years. There is no information on any disability during service in respect of the petitioner in the Veteran Register. (Copy at page 85 of paper book).

7. Heard the learned counsel for the parties and scrutinized the record available on the file.

8. While considering the question of limitation, we find that it is not disputed that the petitioner was commissioned in the Army on 12.8.1948 and retired on 1.2.1966 with service pension. During service the petitioner was placed in LMC 'C' (P) due to disability 'CHOROIDO RETINITIS' Left eye by the Medical Board held at MH Calcutta on 10th June, 1950 on return from J& K. The petitioner was retained in service. In communication dated 06.10.1957 (page 35 of paper book), while considering the officer for grant of permanent commission, the petitioner was examined by eye specialist on 04.10.1957 and as per his opinion the condition of the petitioner had not changed since his last medical held at MH Calcutta on 10.06.1950 and will remain in Medical Cat CEE (P). No fresh medical board was held.

9. While on posting to 9 Haryana Bn NCC at Sonepat, the petitioner sustained leg injury (Fracture) on 21.12.1963 while coming

home on scooter in Rohtak and was treated at MH Delhi Cantt. After hospitalization, the Medical Board (AFMSF-15) (at page 39 of paper book) brings out that the petitioner he was released in medical category 'A'. However there is no mention of earlier eye disability related medical category 'C' permanent.

10. The petitioner retired from service wef 01.02.1966. The petitioner took up his case for grant of disability pension vide communication dtd 05.05.1966 with the authorities. He was informed that his case, vide above letter was forwarded to MoD (Pension-C) on 02.08.1968 and requesting the petitioner's unit, 28, Punjab Bn NCC at Sonepat for details of the Medical Board in respect of petitioner. Record reveals that the petitioner was on Annul Leave from 31.12.1965 to 28.02.1966 when he was informed about his retirement at his residence, however the officer did not join the unit. As a consequence no Release Medical Board was held.(Page 54 of paper book). Copy of this letter was sent to the petitioner's residence for further action on his part. There being no further correspondence, the MoD, vide its letter dated 08.10.1969 rejected the disability pension of the petitioner informing him that there is no record of any disability in his service or medical documents. (R-1).

11. To his query dated 23.07.1975, the authorities informed him that his case has been referred to MoD (Pesion-C) vide letter dated 14.08.1975. After a gap of 17 years case for grant of disability pension was once again taken up by the petitioner vide his letter dated 27.03.1992 and 30.06.1992.

12. After a gap of nearly 28 years, the petitioner filed writ High Court of Punjab & Haryana at Chandigarh (CWP 1251 of 1994) for grant of disability pension.

13. During the initial hearing of the case, the respondents were directed to produce the medical records. The respondents, vide their communication dated 24.07.2012 at page 84 of the paper book bring out that as per para 619 (c) of Regulations for the Army 1987 (Revised), Record of Service, and service dossier along with medical documents in respect of the petitioner have been weed out after its prescribed period retention of 15 years from the date of retirement. There is no information on any disability during service in respect of the petitioner in the Veteran Register. (Copy at page 85 of paper book). During the arguments the learned counsel for the petitioner brought out that no further documents were available with him.

14. From above discussion it emerges that cause of action took place on receipt of MoD letter dated 08.10.1969 rejecting the disability

pension of the petitioner informing him that there is no record of any disability in his service or medical documents. (R-1). The petitioner was also informed about absence of Release Medical Board by his unit by its communication dted 29.11.1968. There was no action on part of the petitioner till he filed the writ in 1994. There is no logical reason for delay of nearly 25 years in filing the civil writ, especially when in absence of medical papers it is not possible to ascertain the degree and nature of the disability of the petitioner. The petitioner expired on 09.08.1996.

15. Section 22 of the Armed Forces Tribunal Act, 2007 provides the period of limitation for filing a petition. There are three contingencies which have been laid down in respect of limitation. Section 22(2) clearly says that Tribunal shall not admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period. So far as Section 22(a) and (b) are concerned, the period of limitation is six months. Sub Clause (C) of Section 22 only applies for the cases in which grievance had arisen by reason of any order preceding three years the date of jurisdiction, powers and authority of the Tribunal became exercisable i.e. three years prior to constitution of the Tribunal. But so far as approaching this Tribunal is concerned, the period is six months.

16. It would not be out of place to note judgment of the Apex Court in **U.P. Jal Nigam and another Vs Jaswant Singh and another, (2006) 11 Supreme Court Cases 464**, where a relief which was granted by the High Court on the basis of judgment of the Apex Court, has been denied by the Apex Court in appeal on the ground of delay and laches. It is interesting to note the facts of the case in brief. A dispute had arisen with regard to the age of superannuation of U.P. Jal Nigam employees. The employees contended that the age of superannuation in their case is 60 years as applicable to State Government employees. The said claim was negated by the High Court and it was held that age of superannuation of such employees is 58 years. The judgment of the High Court was reversed by the Apex Court in the case of Harwinder Kumar, (2005) 13 SCC 300. Thereafter the employees who had retired at the age of 58 years filed the writ petitions claiming the salary etc. on the ground that they were wrongly retired at the age of 58 years instead of 60 years. The High Court, following the judgment of the Apex Court in case Harwinder Kumar (Supra) issued the writs. On appeal, the Apex Court held that delay and laches is important factor in exercise of the discretionary relief under Article 226 of the Constitution of India. When a person is not vigilant

of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to a person similarly situated who was vigilant about his rights and challenged his retirement. It was held that such person who is not vigilant, is not entitled to get the relief. The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution.

17. In **OA No. 55 of 2012 ERA Rakesh Kumar Aggarwal Vs Union of India and others** decided by the Principal Bench at New Delhi on 17.2.2012, a somewhat similar controversy was under consideration. It was also a case of pension of a Army personnel. The Army authorities passed an order against the petitioner therein on 23.4.2004. After about 8 years, the said order was challenged before the Principal Bench of Armed Forces Tribunal. The Tribunal took note of Supreme Court decision in the case of Union of India and others Vs Tarsem Singh (Supra) and held as follows :-

> "In the present case, petitioner was discharged way back in 1981 and he approached the Hon'ble Delhi High Court somewhere in 2000 and Hon'ble Delhi High Court passed the order in 2002. In compliance of order of Hon'ble Delhi High Court dated 15.11.2002, respondents passed an order dated 23.04.2004. Now almost after eight years, the order passed by the respondents on 23.4.2004 has been challenged vide present petition. This kind of inordinate delay cannot be entertained. More so, there is no justification for condonation of delay in this case. Hence, we hold that objection taken by the respondents is correct and petition suffers from inordinate delay and latches. Petition is accordingly dismissed. No order as to costs."

18. We can reach to the same conclusion through different route. 'Cause of action' means, right and infringement of the right. Where a right of a person is infringed, cause of action at once accrues to him. When it is so accrued, time begins to run against him. Once period of limitation begins to run, it does not stop. The passing of the orders by the Army officials denying the disability pension to the petitioner, gave rise to the cause of action and the limitation had begun to run.

19. It may not be out of place to mention that the Apex Court in case **MANIBEN DEVRAJ SHAH vs MUNICIPAL CORPORATION OF BRIHAN MUMBAI, (2012) 5 SCC 157**, after having considered its various previous pronouncements held that even though a liberal and justice approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other

similar statutes, the courts can neither lose sight of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and lot of time is consumed at various stages of litigation apart from the cost. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

20. In **Bala Krishanan v. M. Krishnamurthy (1998) 7 SCC 123**, the Apex Court in Para 11 has held as follows :-

> "Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy for approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

21. The aforesaid judgment has been relied upon and referred in a recent case of the Apex Court in **B. MADHURI GOUD Vs B. DAMODAR REDDY, (2012) 12 SCC 693** wherein the judgment of the High Court condoning the delay in filing the appeal has been set aside. Condonation of delay was sought on the point that the file was misplaced in the office of the Advocate, which was hold to be vague to the core and the

Single Judge committed grave error by entertaining the fanciful explanation given for 1236 days' delay.

22. We cannot loose sight of the fact, the stand taken by the respondents that medical record has been weeded out after they were kept for the prescribed period. In this factual matrix, the condonation of delay would amount to denial of right of the respondents to effectively defend the case. No case for condonation of delay is, therefore made out.

23. There is one more aspect of the case. The petitioner has sought the quashing of the letter dated September 1993 (Annexure P-1) in order to bring his case within the period of limitation. This is a letter written by Defence Pension Liaison Cell to addressed to the petitioner, informing him that nothing can be done at his level, in view of the decision earlier taken by the Government of India. The relevant portion is quoted below:

> "I have also discussed his case with concerned officer of CDDA(P) Allahabad. Since his case has already been considered and decided by Govt. of India, Ministry of Defence, nothing can be done at this belated stage. In case the Officer still feels that his case should be re-opened, he may forward his appeal to the Government of India, Ministry of Defence through Army Hq. As per MoD letter quoted above, all medical documents of the Officer were returned to Org 3(RR &C) (b) after perusal. Papers handed over by you are, therefore, returned herewith for your further necessary action."

24. The petitioner having failed to bring on record the order of Government of India, denying the disability pension and there being no challenge to the said order, the writ petition lacks merit. There is no illegality in the Annexure P-1.

25. There is no material on record for condoning the long delay in filing the petition. It is not a fit case to condone the laches, apart from the fact that the petition lacks merits also, as indicated in paras 23 & 24 of the order.

26. In view of above, the petition is dismissed being barred by laches, but with no order as to costs.

(Justice Prakash Krishna)

(Air Marshal (Retd) SC Mukul)

18.02.2014
raghav

Whether the judgment for reference is to be put on internet? Yes